IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

No. 77-874

GENANETT ALEXANDER, ET AL.,

Petitioners,

v.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONSE OF PETITIONERS IN ALEXANDER V. UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO RESPONDENTS' MOTION TO DISMISS THE WRIT AS IMPROVIDENTLY GRANTED IN HARRIS V. COLE.

On June 19, 1978, this Court granted the writs of certiorari in the cases of Alexander v. United States Department of Housing and Urban Development, No. 77-874 and Harris v. Cole, No. 77-1463, and consolidated the cases. Each of the cases raises the issue of whether Title II of the Uniform Relocation and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, 84 Stat. 1894 (1971)("Relocation Act"), requires the Secretary of the Department of Housing and Urban Development (HUD) to pay benefits and provide assistance to those persons who are evicted from their housing after it has been acquired by the Federal Government, following the default of a federally insured mortgage. The United States Court of Appeals for the District of Columbia Circuit held that the tenants were entitled to Relocation Act benefits whereas the United States Court of Appeals for the Seventh Circuit found

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that they were not.

The Respondents in Harris v. Cole have filed a Motion to Dismiss the Writ as Improvidently Granted, and it is quite apparent that the interests of the tenants in Alexander v. HUD are in conflict with the interests of the tenants in Harris v. Cole. For this reason, the Alexander petitioners find it imperative to respond to the Motion to Dismiss, and to make it clear to the Court that:

a) they do not join in the motion, but rather oppose it;

b) the motion, if granted, should be directed only to the case of Harris v. Cole; and

c) if the Court decides that new federal legislation mandates a change in the course of these cases, there are more appropriate options available other than dismissal which better serve the interests of all parties.

The first two points arise from the obvious fact that dismissal of the writs of certiorari would help only the Cole tenants. They would then be in a position of obtaining benefits regardless of the action that HUD ultimately takes under the Housing and Community Development Amendments of 1978, Pub. L. 95-557, __Stat.__ (1978) ("1978 Housing Act") which became effective on October 31, 1978. The only remaining issue for the Cole tenants would be whether they are entitled to relocation benefits under the Relocation Act or under some other HUD authorization (or both if the non-Relocation Act benefits would leave them with less than the benefits available under the Relocation Act).

On the other hand, dismissal of the writs in each case will leave unsettled a significant conflict between the circuit courts of appeal over the scope of the Relocation Act. This conflict involves the important question of whether persons who reside on previously acquired government property who are ordered to vacate that property for a federal program or project are

"displaced persons" within the meaning of the Relocation Act, and thus entitled to the Act's benefits and services. Hence, even if the Cole Respondents are correct in their projection that HUD will, in the future, begin to provide some assistance to persons whom it displaces, Alexander v. HUD retains considerable practical significance both to the government, generally, and to persons who are displaced by the government.

With respect to the third point, the highly speculative effects of the 1978 Housing Act make dismissal of the writs particularly inappropriate. The 1978 Housing Act provides, inter alia, that it is the policy of the United States that HUD manage and dispose of multi-family housing projects which are owned by the Secretary of HUD "in a manner consistent with the National Housing Act" and:

> . . . in a manner which will protect the financial interests of the Federal Government and be less costly to the Federal Government than other reasonable alternatives by which the Secretary can further the goals of
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> > (1) preserving the housing units so that they can remain available to and affordable by low- and moderate-income families;
> > (2) preserving and revitalizing residential neighborhoods;
> > (3) maintaining the existing housing stock in a decent, safe and sanitary condition;
> > (4) minimizing the involuntary displacement of tenants; and
> > (5) minimizing the need to demolish projects.

Section 203(a). Further, Section 203(d)(1) requires the Secretary to identify those tenants who will be displaced and to provide any relocation assistance which is now authorized by law. Further, Section 902 requires the Secretary to report to Congress "on the current legal and regulatory powers and policies of the Department to prevent or compensate for displacement caused by its own programs."

Significantly, nothing in this legislation mandates that the

regard, the instant situation is quite different from the cases cited by the Cole tenants to show how the intervention of a new statute may justify dismissal of cases after a writ of certiorari has been granted. One involved a new act which repealed the act which the Court was about to interpret. Triangle Improvement Council v. Ritchie, 402 U.S. 497 (1971) (Harlan, J., concurring). The other involved a new act which prospectively prevented the recurrence of actions challenged in that case. Rice v. Sioux City Cemetery, 349 U.S. 70 (1955).

If the Court finds that the 1978 Housing Act might have some effect upon these cases, we urge that a more appropriate avenue is the alternative suggested by the Cole motion -- delaying the argument or the decision until after the Secretary of HUD files her report to Congress on January 31, 1979.

Because the 1978 Housing Act requires only a report (and does not establish a deadline for official HUD action), the status of these cases may be no clearer after January 31, 1979 than they are today. Thus, it may be appropriate to vacate the lower court decisions in Harris v. Cole and Alexander v. HUD and remand them to the district court to make the first determination of the effect of the new legislation on these cases. This would be entirely consistent with this Court's policy of not deciding matters in the first instance before the lower courts have had an opportunity to consider them. Stanton v. Bond, 429 U.S. 973 (1976); Fusari v. Steinberg, 419 U.S. 379 (1975).

WHEREFORE, the Alexander tenants request that the Cole tenants' Motion to Dismiss be denied. In the alternative, the Alexander tenants pray that the dismissal be directed only to the Cole case or that the decisions below in each of the cases be vacated and remanded to the respective district courts to consider the question of the effect of the 1978 Housing Act upon these cases. Finally, the Alexander tenants pray that if the Motion to Dismiss has not been ruled upon by this Court prior to argument on December 5, 1978,

Relocation Act apply to those persons displaced by HUD. Nonetheless, the Cole tenants predict that HUD will reverse its previous and current positionson the applicability of the Relocation Act or at least will submit a report which will show "that relocation services and benefits will be made available to all tenants who are displaced by HUD action, whether or not the Relocation Act is deemed applicable." The Cole tenants find great promise in a quite limited January, 1978 HUD regulation and a July, 1978 letter of an Assistant Secretary (which we have not seen) when they predict that HUD's forthcoming report will identify broad powers and a commitment to use them. The Alexander tenants foresee a much bleaker report when they consider HUD's threat to evade a decision of this Court should it find that the Alexander and Cole tenants are covered by the Relocation Act. See, e.g. HUD Brief, p. 62; HUD Petition for Writ of Certiorari in Harris v. Cole, No. 77-1463, p. 17). HUD's failure to offer even a modicum of relief to the Alexander tenants during the pendency of this case, and HUD's continuing failure to provide assistance to those displacees who are not eligible for Relocation Act benefits is striking evidence of HUD's policy based on its current statutory authority. See, e.g. Moore v. United States Department of Housing and Urban Development, 561 F.2d 175 (8th Cir. 1977, cert. den. U.S. 46,L. W. 3722 (May 22, 1978); Conway v. Harris, No. 78-1463 (7th Cir., Nov. 13, 1978); Dawson v. Department of Housing and Urban Development, 428 F. Supp. at 328 (N.D. Ga. 1976), appeal pending (C.A. 5, No. 77-1382).

Regardless of whose crystal ball is more accurate, the important point is that the effects of the 1978 Amendments upon the situation involved in this case are highly speculative. The Report of the Secretary to Congress will only be a report, not a commitment to act; and its scope, content, recommendations, and implementation are all unknown. Thus, the 1978 Housing Act creates no change in the applicability of the Relocation Act or in the treatment of those displaced from HUD-owned housing. And in this critical

and that if the Court wishes to have argument on the Motion at that time, that the Alexander tenants be granted a period of time to argue the Motion separately from John Vanderstar, Esq., counsel for the Respondents in Harris v. Cole, whom the Alexander tenants are otherwise authorizing to represent them in oral argument of these consolidated cases.

Respectfully submitted,

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